



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: HADLACZKY
Serial No. 09/724,693
Filed: November 28, 2000
Conf. No.: 7857
For: *ARTIFICIAL CHROMOSOMES,
USES THEREOF AND METHODS
FOR PREPARING ARTIFICIAL
CHROMOSOMES*
Art Unit: 1632
Examiner: Shukla, R.

CERTIFICATE OF MAILING BY "EXPRESS MAIL"

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REQUEST TO WITHDRAW HOLDING OF ABANDONMENT MAR 27 2003
PURSUANT TO 37 C.F.R. § 1.181
OR, ALTERNATIVELY, TECH CENTER 1600/2900
A PETITION TO REVIVE PURSUANT TO 37 C.F.R. § 1.137(b)

Commissioner of Patents
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Responsive to the Notice of Abandonment, dated March 10, 2003, for failure to file a timely and proper reply to the Office letter mailed August 21, 2002, Applicant requests withdrawal of the holding of abandonment, or alternatively, Applicant petitions for revival of the application, and asks the Commissioner to please consider the following remarks:

REMARKS

The Commissioner is hereby authorized to charge any fees that may be required in connection with filing this paper or this application to Deposit Account No. 50-1213.

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STATEMENT OF FACTS

(1) On August 14, 2002, an election and preliminary amendment accompanying a continued prosecution application was filed in response to an Office communication dated July 2, 2002.

(2) On August 21, 2002, a Notice of Improper Request for Continued Examination (RCE) was mailed to the Applicant. The Notice states that "If a request for a continued prosecution application (CPA) under 37 CFR 1.53(d) has been filed in the utility or plant application (including a previously filed CPA) that was filed on or after May 29, 2000, the request for a CPA has been treated as a RCE because the CPA practice no longer applies to such application." The Notice also states that "If the RCE was accompanied by a reply to a non-final Office action, the reply will be entered and considered under 37 CFR 1.111." A period for reply was not indicated in the Notice. A copy of the Notice is provided herewith.

(3) As evidenced by the attached papers, the CPA, which was treated as an RCE, was accompanied by a reply to a non-final Office action. The reply included an election and preliminary amendment. The documents were filed using "Express Mail Post Office to Addressee" Service under 37 C.F.R. § 1.10, on August 14, 2002.

(4) The stamped return postcard, attached hereto, indicates receipt by the PTO of the Continued Prosecution Application (CPA) Request Transmittal (in duplicate), the Election and Preliminary Amendment responsive to the restriction requirement mailed on July 2, 2002, and a check in the amount of \$566.

Therefore, the response to the non-final Office action, mailed August 14, 2002, should have been entered and considered. The Notice of Improper Request for Continued Examination (RCE) provided information, but did not

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request a reply. Therefore, Applicant requests withdrawal of the holding of abandonment.

Should the commissioner determine that abandonment was proper, then Applicant hereby petitions for revival of the abandoned application pursuant to C.F.R. § 1.137(b) and includes the following:

- (1) a copy of the election and preliminary amendment filed in response to the Office communication dated July 2, 2002;
- (2) the required statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional; and
- (3) a copy of the Notice of Abandonment received by Applicant's representative on March 17, 2003.

The abandonment was unintentional as was any delay in requesting revival. The Applicant was first notified of the abandonment of the application on March 17, 2003, by a Notice of Abandonment, dated March 10, 2003. Thus, the Applicant has filed the instant petition (1) within three months of the date applicant was first notified that the application was abandoned; and (2) within one year of the date of abandonment of the application.

Since the instant application was filed after June 8, 1995, a terminal disclaimer with disclaimer fee is not required.

STATEMENT

The entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

If it is determined that a petition under 37 C.F.R. 1.137(b) is appropriate, the Commissioner is hereby authorized to charge any fees that may be required in connection with filing this paper or this application to Deposit Account No.

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50-1213. However, as the Applicant believes that the holding of abandonment should be withdrawn, no fee should be due.

* * *

In view of the above, the grant of the instant request and the withdrawal of the holding of abandonment for the above-referenced application are respectfully requested.

Respectfully submitted,
HELLER EHRMAN WHITE & McAULIFFE LLP

By:


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